



Commonwealth of Massachusetts State Ethics Commission

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SUFFOLK, ss

COMMISSION ADJUDICATORY
DOCKET NO. 07-0006

IN THE MATTER
OF
DAVID GUERTIN

DISPOSITION AGREEMENT

The State Ethics Commission and David Guertin enter into this Disposition Agreement pursuant to Section 5 of the Commission's *Enforcement Procedures*. This Agreement constitutes a consented-to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, § 4(j).

On July 25, 2006, the Commission initiated, pursuant to G.L. c. 268B, § 4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Guertin. The Commission concluded its inquiry and, on October 11, 2006, found reasonable cause to believe that Guertin violated G.L. c. 268A.

The Commission and Guertin now agree to the following findings of fact and conclusions of law.

Findings of Fact

1. David Guertin is the Provincetown Department of Public Works (DPW) director.
2. Provincetown-MacMillan Realty Trust (PMRT) owns 16 MacMillan Wharf in Provincetown.
3. As DPW director, Guertin was the project manager for the renovation of MacMillan Wharf, was involved in overseeing the Town water system and in determining betterment assessments, all of which financially impact PMRT.
4. Guertin owned a 30-foot sailboat that he kept at a mooring he leased in the Provincetown marina. In order to reach shore, Guertin would have to either use a dinghy or receive a ride from another boat.
5. In late spring 2001, Guertin while he was project manager for the Wharf renovation, began making repairs to his sailboat while it was docked at his mooring in the harbor. A PMRT principal seeing that Guertin was having some difficulties invited Guertin to tie up his boat at the PMRT slip on the wharf to make the repairs. The parties did not discuss a docking fee for Guertin's use of the slip.
6. Guertin docked his boat at PMRT's slip for approximately 10 days. The approximate value of the docking was \$1,000. Guertin did not pay PMRT anything for using its slip.
7. Guertin had reason to know that the reason he received the free dockage was because he was the DPW director.

Conclusions of Law

8. General laws, c. 268A, § 23(b) (2) prohibits a municipal employee from knowingly, or with reason to know, using his official position to secure for himself or others unwarranted privileges or exemptions which are of substantial value and not properly available to similarly situated individuals.

9. As the Provincetown DPW director, Guertin was a municipal employee within the meaning of G.L. c. 268A.

10. Guertin's free use of PMRT's slip for approximately ten days was a privilege of substantial value.

11. The privilege was unwarranted and not otherwise properly available to similarly situated individuals because Guertin received a benefit that other members of the boating public were not entitled to and had reason to know it was given to him to foster goodwill in his dealings with PMRT.

12. This unwarranted privilege was not otherwise properly available to similarly situated individuals.

13. Guertin had reason to know that in effect he used his DPW director position to obtain the free dockage.

14. Therefore, by having reason to know he was using his position as DPW director to secure for himself \$1,000 in free dockage, an unwarranted privilege of substantial value not properly available to similarly situated individuals, Guertin violated §23(b)(2).

Resolution

In view of the foregoing violations of G.L. c. 268A by Guertin, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Guertin:

- (1) that Guertin pay to the Commission the sum of \$1,000 as a civil penalty for violating G.L. c. 268A as noted above;
- (2) that Guertin pay \$1,000 for the use of the PMRT slip; and
- (3) that Guertin waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

DATE: February 5, 2007